

In the United States Court of Federal Claims

No. 04-710C

Filed: June 23, 2010

TO BE PUBLISHED

JOHN FILOSA and SUSAN KEMBLE,
on their own behalf and on behalf of all
others similarly situated,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

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Attorney's Fees and Expenses;
Motion For Final Approval Of Class
Action Settlement;
RCFC 23, Class Actions.

FINAL ORDER APPROVING CLASS ACTION SETTLEMENT

- A. Plaintiffs John Filosa and Susan Kemble ("Plaintiffs") on behalf of themselves and as representatives of the Class previously certified by this Court, and Defendant the United States, have entered into a settlement of the claims asserted in the above-captioned class action (the "Action"), the terms of which are set forth in a Settlement Agreement dated March 19, 2009 (the "Agreement");
- B. On March 30, 2010, the court entered an order preliminarily approving the Settlement ("Preliminary Approval Order") and directing the issuance of notice of the Settlement to the Class in accordance with the terms of that order;
- C. Notice has been provided to the members of the Class in accordance with the Preliminary Approval Order and no objections have been filed or served by any member of the Class to any aspect of the Settlement, the plan of allocation described in Section III of the Notice of Class Action Settlement or the request for attorney's fees, expenses, or service awards, within the time frame set forth in the Preliminary Approval Order;
- D. Plaintiffs have moved pursuant to Rules 23(e), 23(h), and 54(d)(2) of the Rules of the United States Court of Federal Claims ("RCFC"), for an Order approving: (1) the class action settlement set forth in the Settlement Agreement; (2) the Plan of Allocation; (3) an award of

attorney's fees and expenses to be paid to Plaintiffs' counsel out of the Settlement proceeds; and (4) an award of service payments to the two Class Representatives; and

- E. The court, having read and considered the Settlement Agreement, Plaintiff's submissions in support of their Motion For Final Approval, and all prior proceedings in this Action, and having held a Fairness Hearing on June 14, 2010 at 10:30 a.m, finds that substantial and sufficient grounds exist for entering this Final Judgment And Order Of Dismissal With Prejudice.

IT IS HEREBY ORDERED:

1. The court finds that the method and distribution of the Notice Of Class Action Settlement were implemented in accordance with the terms of the Preliminary Approval Order; and:
 - a. Constituted the best practicable notice to Class members under the circumstances of this Action;
 - b. Were reasonably calculated, under the circumstances, to apprise Class members of: (i) the proposed Settlement of this class action, (ii) their right to object to any aspect of the proposed Settlement, the plan of allocation, the request for attorney's fees, expenses or service awards, (iii) their right to appear at the Fairness Hearing, either on their own or through counsel hired at their own expense, and (iv) the release of their claims asserted in the Action if the Settlement is approved by the court;
 - c. Were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and
 - d. Fully satisfied all applicable requirements of the United States Constitution (including the Due Process Clause), RCFC 23(c) and any other applicable law.
2. The court has jurisdiction over the subject matter of the Action, including the terms and conditions of the Settlement Agreement and over all parties to the Action and all Class members.
3. The court finds that the terms and provisions of the Settlement Agreement were negotiated by the parties at arms-length, entered into by the parties in good faith, and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of each of the parties and the Class members, and consistent and in compliance with all applicable requirements of RCFC 23(e), and any other applicable law. The parties and counsel are hereby directed to implement and consummate the Settlement Agreement according to its terms and conditions.
4. The court finds that Plaintiffs and all other members of the Class, as identified in paragraph

10 of the Settlement Agreement, are bound by the Settlement Agreement and by this Final Order.

5. Upon this Final Order becoming final (no longer subject to appeal or affirmed on appeal), each and every Plaintiff and Class member shall be deemed to have, and by operation of this Final Order shall have, fully, finally, and forever released, relinquished, and discharged the United States from all claims asserted in the January 31, 2008 Amended Complaint.
6. Upon this Final Order becoming final (no longer subject to appeal or affirmed on appeal), Defendant's counsel will certify to the Financial Management Service of the Department of the Treasury, or other appropriate Government agency, that the amount of \$850,000.00 (the "Settlement Amount") is due. As soon as possible after the date that the certification described above is submitted, the United States shall transmit the Settlement Amount to Klafter Olsen & Lesser LLP ("Class Counsel"), as authorized counsel for the Class. As soon as is practicable thereafter, Klafter Olsen & Lesser LLP will cause distributions to be made from the Settlement Amount to Plaintiffs, the Class and Class Counsel in accordance with the terms of this Final Order.
7. The Plan Of Allocation is hereby approved. Each Class member will share in the Settlement funds available after payment of the attorney's fees and expenses approved below (the "Net Settlement Amount") on a pro-rata basis so that each Class member receives the same proportionate share of the Net Settlement Amount that their maximum damages, as computed by Class Counsel, utilizing the information provided to Class Counsel by each Class member, bears to the total maximum damages of all Class members.
8. Class counsel are hereby awarded attorney's fees in the amount of \$212,500.00, representing 25% of the Settlement Amount, that shall be paid out of the Settlement Amount. This award of attorney's fees represents a reasonable percentage of the proceeds of the Settlement given the facts and proceedings in the Action, as detailed in the submissions by Class Counsel in support of the Motion For Final Approval.
9. Class Counsel is hereby awarded \$8,038.08 to reimburse the expenses incurred and to be incurred in prosecuting and resolving this Action, and up to an additional \$1,000.00 for costs incurred since the filing of the Motion For Final Approval, that shall be paid out of the Settlement Amount. The amount of expenses awarded is reasonable given the facts and proceedings in the Action, as detailed in the submissions by Class Counsel in support of the Motion For Final Approval.
10. In the Motion For Final Approval, Class Counsel also requests service awards of \$15,000.00 for the Class Representatives, John Filosa and Susan Kemble. On June 7, 2010, the Government filed a Response To Plaintiff's Motion For Final Approval, objecting to the request for service awards. The Government correctly argues that the service awards would reduce by approximately five percent the amount each class member receives. In addition,

Plaintiffs have not cited any United States Court of Federal Claims cases in which the court has allowed a service award, where the Government had not already consented to the award. As such, the court denies the request for service awards of \$15,000.00 for the Class Representatives.

11. Class Counsel and the Plaintiffs adequately represented the Class under RCFC 23(a)(4) and 23(g) in prosecuting and resolving this Action.
12. This Action is hereby dismissed on the merits and with prejudice. The parties are to bear their own costs, except as otherwise provided in this Final Order.
13. Without affecting the finality of this Final Order for purposes of appeal or in any other way, the court hereby expressly retains exclusive jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement and the administration and consummation of the Settlement embodied therein, including any distribution from or disposition of the Settlement Amount, and for any other purpose.
14. In sum, Plaintiffs are awarded the Settlement Amount of \$850,000.00, to be distributed as expressed under the Plan of Allocation. In addition, Class Counsel is awarded attorney's fees in the amount of \$212,500.00, representing 25% of the Settlement Amount, and \$8,038.08 to reimburse the expenses incurred and to be incurred in prosecuting and resolving this Action, and up to an additional \$1,000.00 for costs incurred since the filing of the Motion For Final Approval. The Clerk of the United States Court of Federal Claims is directed to dismiss the January 31, 2008 Amended Complaint with prejudice.

IT IS SO ORDERED.

s/ Susan Braden
SUSAN G. BRADEN
Judge